

1 [SEE SIGNATURE PAGE FOR PARTIES AND COUNSEL OF RECORD]
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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 ZEP SOLAR, INC.,

11 Plaintiff,

12 v.

13 WESTINGHOUSE SOLAR, INC. (formerly
known as AKEENA SOLAR, INC.);
14 ANDALAY SOLAR, INC.; LIGHTWAY
GREEN NEW ENERGY COMPANY,
LTD.; BRIGHTWAY GLOBAL, LLC;
15 MORRISON SUPPLY COMPANY, LLC;
SKY SOLAR SOLUTIONS, LLC;
16 ALTERNATIVE POWER & ELECTRIC,

17 Defendants.

18 WESTINGHOUSE SOLAR, INC. et al.,

19 Counterclaimants,

20 v.

21 ZEP SOLAR, INC.,

22 Counterdefendant.

23 Case No. CV 11-6493 JSW

24 **STIPULATION AND *PROPOSED*
ORDER REQUESTING TO CONTINUE
CERTAIN PRE-TRIAL DATES**
AS MODIFIED

Judge: Hon. Jeffrey S. White
Complaint Filed: December 20, 2011

25 Plaintiff/Counterdefendant Zep Solar, Inc. ("Zep") and Defendants/Counterclaimants
26 Westinghouse Solar, Inc. and Andalay Solar, Inc. (together, "WSI") and Lightway Green New
27 Energy Company, Ltd., Brightway Global, LLC, Morrison Supply Company, LLC, Sky Solar

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Case No. CV 11-6493 JSW
STIPULATED REQUEST TO CONTINUE
CERTAIN PRE-TRIAL DATES
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1 Solutions, LLC, and Alternative Power & Electric (all collectively, "Defendants"),¹ by and
2 through their respective counsel, pursuant to this Court's Civil Standing Order and Northern
3 District of California Civil Local Rule 6-2, make this stipulated request for an order to continue
4 case scheduling dates with reference to the following facts:

5 WHEREAS, Zep filed this action on December 20, 2011, alleging infringement of Zep's
6 U.S. Patent No. 7,592,537;²

7 WHEREAS, the parties are engaging in preliminary motion practice related to the
8 dismissal of some parties for a lack of personal jurisdiction and for failure to state a claim;

9 WHEREAS, the Court vacated the previously set Case Management Conference to allow
10 for resolution of these motions, and there are accordingly no other dates presently scheduled (save
11 dates for briefing and hearing on the above referenced motions);

12 WHEREAS, by Order dated April 16, 2012 the Court granted Zep until May 30, 2012 to
13 take discovery as to whether Morrison Supply and Sky Solar Solutions have contacts with
14 California sufficient to support personal jurisdiction (Docket No. 56);

15 WHEREAS, recently, in the last several weeks the parties have engaged in settlement
16 discussions;

17 WHEREAS, the parties have made significant progress in those discussions and are
18 optimistic they will achieve a final resolution of the parties' disputes in the coming weeks;

19 WHEREAS, in light of these positive developments, the parties have already obtained a
20 stipulated deferral of dates in the International Trade Commission relating to a complaint filed by
21 WSI against Zep in that forum (Exhibit A);

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23 ¹ Defendants Morrison Supply Company, LLC and Sky Solar Solutions, LLC are specially
24 appearing for the sole purpose of indicating their agreement to this Stipulation and do not by this
stipulation, and the parties agree by this stipulation do not, waive previously asserted objections
to personal jurisdiction.

25 ² The parties are presently involved in a series of additional actions in the Northern District of
26 California and United States International Trade Commission concerning two WSI patents – U.S.
27 Patent No. 7,406,800 (the "800 Patent") and U.S. Patent No. 7,987,641 (the "641 Patent")
(*Akeena Solar et al. vs. Zep Solar, et al.*, U.S.D.C. N.D. Cal. Case No. CV 09-5040 filed October
22, 2009 re the '800 patent (stayed); *Zep Solar et al. vs. Westinghouse Solar, et al.*, U.S.D.C.
N.D. Cal. Case No. CV 11-3800 filed August 2, 2011 re the '641 Patent (stayed); *In the Matter of
Certain Integrated Solar Power Systems and Components Thereof*, USITC Investigation No. 337-
TA-811 filed October 3, 2011(several dates deferred approximately 30 days)).

1 WHEREAS, the parties wish to obtain a similar deferral of upcoming dates in this Action
 2 to facilitate these ongoing settlement discussions;

3 ACCORDINGLY, it is HEREBY STIPULATED by and among the parties and their
 4 counsel of record that the current scheduled dates in this action be deferred by approximately
 5 thirty days and be modified as follows (under the "Proposed" column):

6 Event	7 Current Date	8 Proposed New Date
9 WSI, Morrison Supply, and Sky Solar to file amendments to their answers and counterclaims, if any	May 4, 2012	June 1, 2012
10 Zep's Opposition to Alternative Power & Electric's Motion to Dismiss	May 15, 2012	June 15, 2012
11 Alternative Power & Electric's Reply on Motion to Dismiss	May 22, 2012	June 22, 2012
12 Zep to Complete Jurisdictional Discovery Pursuant to this Court's Order of April 16, 2012 (Docket 56)	May 30, 2012	June 29, 2012
13 Zep's Opposition to Sky Solar Solutions and Morrison Supply Co.'s Motion to Dismiss	June 6, 2012	July 6, 2012
14 Hearing on Alternative Power & Electric's Motion to Dismiss DOCKET 72	June 8, 2012	July 13, 2012 ³
15 Sky Solar Solutions and Morrison Supply Co.'s Replies On Motion to Dismiss	June 13, 2012	July 13, 2012
16 Hearing on Sky Solar Solutions and Morrison Supply Co.'s Motions to Dismiss DOCKET NOS. 12, 14	June 29, 2012	July 27, 2012 August 3, 2012

17 The Court previously continued the hearings on Defendants' motions to dismiss. Docket
 18 Nos. 51, 56. The Court vacated the date set for the Case Management Conference. Docket No.
 19 56. The scheduling modifications requested by this stipulation will not affect other dates set in
 20 this action.

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 27 ³ The parties request that the hearing on Alternative Power & Electric's Motion to Dismiss be
 28 continued to July 13, 2012, which is more than 30 days from the current hearing date, as that
 appears to be the first available hearing date on the Court's calendar.

1 IT IS SO STIPULATED.

2 Dated: April 26, 2012

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3 By: _____ /s/

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10 Attorneys for Plaintiff/Counterdefendant
11 ZEP SOLAR, INC.

12 Dated: April 26, 2012

13 SNELL & WILMER LLP

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19 Attorneys for Defendants/Counterplaintiffs
20 WESTINGHOUSE SOLAR, INC.,
ANDALAY SOLAR, INC.; Defendant
21 ALTERNATIVE POWER & ELECTRIC;
and specially appearing Defendants
22 MORRISON SUPPLY COMPANY, LLC,
and SKY SOLAR SOLUTIONS, LLC.

1 Dated: April 26, 2012

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9 GLOBAL, LLC

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1 **ATTESTATION UNDER GENERAL ORDER NO. 45**

2 In accordance with Northern District of California General Order No. 45, Section X, the
3 filer of this document hereby attests that the concurrence to the filing of this document has been
4 obtained from the other signatories hereto.

5 Dated: April 26, 2012

6 FARELLA BRAUN + MARTEL LLP

7 By: _____ /s/
8 Jeffrey M. Fisher

9 Attorneys for Plaintiff/Counterdefendant
10 ZEP SOLAR, INC.

11 **ORDER**

12 **PURSUANT TO STIPULATION, IT IS SO ORDERED. AS MODIFIED.**

13 Dated: April 27, 2012

14 By: 
15 THE HONORABLE JEFFREY S. WHITE
16 UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC**

**The Honorable David P. Shaw
Administrative Law Judge**

In the Matter of

**CERTAIN INTEGRATED SOLAR
POWER SYSTEMS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-811

**ORDER NO. 7 GRANTING JOINT MOTION AND
STIPULATION TO MODIFY PROCEDURAL SCHEDULE**

Upon consideration of the Joint Motion and Stipulation to Modify Procedural Schedule ("Stipulation"), and there being good cause shown, it is hereby ORDERED that the Motion is GRANTED and that the Procedural Schedule (Order No. 6) is hereby modified as follows:

Event	Date
File tentative list of hearing witnesses (with an indication of the relationship of each party's relationship to each witness)	May 11, 2012
File identification of expert witnesses (including expertise and curriculum vitae)	May 11, 2012
File notice of prior art	May 18, 2012
File joint list of disputed claim terms and proposed constructions thereof; joint list of claim terms that must be construed but whose meanings are not disputed and joint proposed construction thereof; and joint statement regarding identification of accused products	June 22, 2012
Fact Discovery Cutoff	June 22, 2012
Deadline for second settlement conference	July 6, 2012
Exchange and file initial expert reports	June 27, 2012
File second settlement conference joint report	July 11, 2012
Exchange and file rebuttal expert reports	July 11, 2012

All other dates on the Procedural Schedule are to remain the same. No written discovery will be served, no document productions will be required, and no depositions will be noticed or taken

until after May 11, 2012. Further, the deadline for the parties to file any opposition to any motion currently pending as of the date of this Joint Motion and Stipulation and the deadline to respond to pending written discovery shall be extended to May 21, 2012.

IT IS SO ORDERED.

DATED: 4/11/2012



David P. Shaw
Administrative Law Judge

**CERTAIN INTEGRATED SOLAR
POWER SYSTEMS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-811

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER No. 7** has been served by hand upon the Commission Investigative Attorney Lisa M. Kattan, Esq., and the following parties as indicated, on April 12, 2012.



James R. Holbein, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

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And Andalay Solar, Inc.:**

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**CERTAIN INTEGRATED SOLAR
POWER SYSTEMS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-811

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